December 23, 2002

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Further Notice of Proposed Rulemaking in CC Docket No. 00-256,* 16 FCC Rcd. 19613 (2001); *Ex-Parte* Presentation in CC Docket Nos. 96-45, 98-77, 98-166 and 00-256

Dear Ms. Dortch:

This is an *ex parte* communication in the above-captioned dockets concerning the FCC's pending proposal to eliminate the price cap "all-or-nothing" rules.

As explained in greater detail in the enclosed proposal, CenturyTel urges prompt FCC action to eliminate the price cap all-or-nothing rules as advocated in the comments and reply comments filed in this proceeding by CenturyTel and other carriers. Specifically, CenturyTel proposes:

- That the Commission make it possible for rate-of-return carriers to elect price cap regulation on a study area basis;

- That the Commission ensure that the price cap and pooling rules are modified so as to create an appropriate regulatory framework for smaller and rural carriers;

- That these changes include adopting an appropriate Average Traffic-Sensitive Target Rate for carriers with especially low line density; and

- That the Commission simultaneously take steps to stabilize federal universal service support for carriers electing this form of regulation, including freezing current levels of support for the duration of the plan.

The enclosure specifies CenturyTel's proposed changes to the Commission's Part 36, 54, 61 and 69 rules to accomplish these goals.

Please direct any questions concerning this matter to me or Richard Cameron in this office at (202) 637-2200, or to Jeffrey Glover or John Jones of CenturyTel at (318) 388-9000.

Very truly yours,

Karen Brinkmann

Enclosure

cc: Christopher Libertelli, *Office of Chairman Powell*
Matthew Brill, *Office of Commissioner Abernathy*
Lisa Zaina, *Office of Commissioner Adelstein*
Jordan Goldstein, *Office of Commissioner Copps*
Dan Gonzalez, *Office of Commissioner Martin*

Wireline Competition Bureau:

Jane Jackson
Rich Lerner
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Jessica Rosenworcel
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Ted Burmeister

CENTURYTEL

THE FCC SHOULD PERMIT RATE-OF-RETURN CARRIERS TO ELECT PRICE CAP REGULATION FOR INTERSTATE ACCESS CHARGES ON A STUDY AREA BASIS AND ELIMINATE THE "ALL – OR – NOTHING" RULES

I. Background – Why CenturyTel Needs Relief From the All-or-Nothing Rules

- All-or-Nothing relief is needed for both acquisitions and legacy properties

- There is no clear path for CenturyTel's operating companies to adopt price caps or other forms of incentive regulation under the current rules

- The lack of options hinders CenturyTel' s ability to attract capital for investment (*e.g.*, for the deployment of new technologies and acquisition of new lines)

- The need for waivers also adds to the cost, delay and uncertainty of acquiring rural lines from price cap carriers, despite the fact that waivers are routinely granted

- CenturyTel needs options to remain a viable rural provider, to continue investing in rural markets, and to respond to competitive service offerings

- CenturyTel could successfully operate under price caps, and access customers could benefit from lower traffic-sensitive rates, in some of CenturyTel's larger and more homogeneous markets

II. Specific rule changes should accomplish the following:

- Enable acquisitions: Eliminate §61.41(c)(2) so rate-of-return companies who acquire price capped exchanges need not convert to price caps at the holding company level (§61.41.(c)(3) also may be eliminated as it will become moot)

- Give flexibility for rate-of-return carriers to elect price cap regulation on a study area basis: Eliminate §61.41(b) so price cap tariffs may be filed for some study areas without necessitating that all study areas be brought under price caps

- Benefit access customers by lowering traffic-sensitive charges in electing study areas to the Target Rates: Most rate-of-return companies have cost-based interstate traffic-sensitive access charges above $0.015 per minute; therefore, enabling the adoption of price caps will produce an immediate benefit to access customers by bringing down traffic-sensitive rates.

- Provide alternatives for carriers whose actual traffic-sensitive rates are significantly above the Target Rates for average traffic-sensitive (ATS) charges:

  - Amend §61.3(qq) to establish the following ATS Target Rates:

    - $0.0125 for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) less than 15 lines per square mile and current ATS rates at or above this Target Rate;
    - Freeze ATS rates at current levels for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) less than 15 lines per square mile and current ATS rates below $0.0125;
    - $0.0095 for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of at least 15 but less than 19 lines per square mile and current ATS rates at or above this Target Rate;
    - Freeze ATS rates at current levels for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of at least 15 but less than 19 lines per square mile and current ATS rates below $0.0095;
    - Freeze ATS rates at current levels, up to a maximum ATS rate of $0.0095, for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of 19 lines or more per square mile, for carriers newly electing price caps

  - Amend §61.45(b)(1)(ii) so *"X" = GDP-PI* effective immediately for carriers electing this plan

- Ensure against harm to consumers by preserving federal universal service support:
    - *Avoid "revenue shock" when ATS rates are reduced by creating a "TS Additive" to an electing carrier's interstate support:* Amend §54.901 to permit electing carriers to move their ATS rates to the new Target Rate (described above) on a revenue-neutral basis; where an electing carrier's existing ATS rate is above the Target Rate, allow such carrier to recover the difference between the Target Rate and their existing revenue requirement through a *"TS Additive"* to ICLS; then freeze the TS Additive on a study area basis for the duration of the plan

    - *Maintain existing levels of Interstate Common Line Support (ICLS) and Long-Term Support (LTS) for the duration of the plan:* Amend §54.901(a) to include carriers electing price caps after the effective date of this plan in addition to "rate-of-return carriers"; freeze for the duration of the plan, on a per-line basis, both ICLS and LTS at existing levels (with a possible adjustment to ICLS for a non-primary residential line SLC increase to $7.00 upon conversion to price caps); also amend §54.902 to clarify that ICLS (frozen on a per-line basis as described above) will follow the transferred exchanges where the buyer is a carrier electing price caps under this plan; in addition, amend §54.303(a) to clarify that LTS will continue to be made available to LECs who elect price caps under this plan

    - *Maintain existing levels of Local Switching Support(LSS) for the duration of the plan:* Amend §54.301(a) to freeze LSS on a study area basis for the duration of the plan

    - *Avoid any impact on the fixed $650 million fund of interstate CALLS support*: Amend §54.800 to redefine Price Cap LEC for the purpose of Subpart J of Part 54 as excluding carriers that elect price caps under this later plan

    - *Create predictable and stable High-Cost Loop Support (HCLS)*: Amend §36.631 to freeze HCLS on a per-line basis. Amend §36.603 to adjust this frozen per-line amount only for GDP-CPI, while continuing to apply the Rural Growth Factor to that portion of the fund that supports other rural carriers. All rural carriers remain eligible to receive safety net and safety valve support

- Retain the low-end adjustment to ensure a reasonable earnings opportunity: Retain the existing rule that price cap carriers who earn below 10.25% may increase their Price Cap Indices effective July 1 the following year to target an interstate earnings level of 10.25%

- Grant flexibility to pooling carriers: Amend §69.3(e)(9) by deleting the second sentence, so carriers may exit the pool to elect price caps for some study areas but keep others (under rate-of-return regulation) in the pool

- Ensure stability by putting the plan in place for 5 years

III. Public Benefits of This All-or-Nothing Relief:

- TS charges for interstate access will be stabilized: Pursuant to § 61.3(qq)(2), CenturyTel companies would qualify for the $0.0125 Target Rate based on line density of fewer than 15 lines per square mile at the holding company level (excluding lines acquired from mandatory price cap companies); CenturyTel's current composite ATS rate is well above $0.015 in most study areas, and costs per line are increasing; thus, access customers will benefit from lower and stable interstate TS rates if CenturyTel is permitted to adopt price caps under this plan

- High-Cost Loop Support will be stabilized: A freeze will increase the predictability and stability of HCLS, creating a climate that is favorable for long-term capital planning and fostering new investment

- Investment will be encouraged: High-risk investment in new technologies in rural areas will be encouraged by the prospect of higher earnings; and new acquisitions will become less costly and disruptive to consummate because the all-or-nothing waiver process will have been eliminated (although consumers and the Commission still will have the opportunity to review study area boundary changes and tariff filings, and will have notice of the change in service provider under the Section 214 and "slamming" notification rules)

- Consumers will get the benefits of price caps without the loss in service quality experienced in areas served by the mandatory price cap carriers:

- Unlike the mandatory price cap carriers, CenturyTel serves relatively small study areas that are predominantly rural in nature; CenturyTel's reputation rests on the quality of its service to rural customers

- Unlike the mandatory price cap carriers, CenturyTel will be an elective price cap carrier, and will not elect price caps for study areas where it can only successfully operate by curtailing investment in high-cost areas

- Unlike the mandatory price cap carriers, CenturyTel would be electing price caps at a time when the states have had years of experience under their own (intrastate) price cap plans; the states are fully prepared to (and actively do) police LEC service quality and infrastructure investment – many smaller ILECs, including many CenturyTel operating companies, are governed by incentive regulation today for their intrastate rates

- Unlike the mandatory price cap carriers, CenturyTel is as efficient an operator as any carrier operating comparable exchanges, and seeks to sustain that efficiency without jeopardizing service quality or reliability; while CenturyTel does not expect to experience the same efficiency gains under price caps as the larger carriers did, CenturyTel's future lies not in diminishing service to rural America, but in providing the best quality service, offering innovations that respond to customer needs, and providing, maintaining and upgrading a network capable of supporting vertical services

IV. All-or-Nothing Relief Does Not Require Additional Safeguards:

- Customers are adequately protected by the existing accounting rules and affiliate transactions rules

- The Commission and customers can detect cost-shifting in tariff filings

- State Commissions continue to review carriers' costs as well

- The FCC may order the production of records at any time

- The Commission may continue to enforce its "one-way door" rules so carriers may not "game the system" by shifting back and forth between price caps and rate-of-return regulation over the life of the plan

V. <u>The Commission Should Adopt All-or-Nothing Relief in Time for 2003 Adoption</u>

- The Commission should adopt and release these rule changes by May 31, 2003, to give carriers adequate opportunity to decide whether to elect this plan

- The Commission should adopt a 5-year plan, under which carriers may elect to designate individual study areas beginning in June 2003, effective July 1, 2003; carriers also should be permitted to designate study areas for this plan at any subsequent annual or semi-annual tariff filing – *e.g.*, December 2003, June 2004, December 2004, June 2005, etc.; finally, the Commission should make adoption of the plan as to any study area effective for the remainder of the 5-year life of the plan